IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

ST.Rev..No. 300 of 2007

AGAINST THE ORDER IN TA.254/2005 DTD.10.5.2007 of
S.T.A.TRIBUNAL, ADDL.BENCH,PALAKKAD
.....

REVISION PETITIONER/APPELLANT:

M/S PUTHANANGADI FLOUR & OIL MILLS,
KALLETTUMKARA,
THRISSUR DISTRICT,
REPRESENTED BY ITS PARTNER,
N.J.NIXON.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENT/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES DEPARTMENT,
SECRETARIAT,
THIRUVANANTHAPURAM-1.

BY SR. GOVT. PLEADER SRI. MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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S.T.Rev. No.300 of 2007

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Dated this the 23rd day of November, 2007.

ORDER

H.L.DATTU, CJ,

Petitioner is a registered dealer under the provisions of the Kerala General Sales Tax Act (hereinafter, for the sake of brevity, referred to as 'Act, 1963).

2. Petitioner is engaged in the manufacture of coconut oil and oil cake. According to the petitioner, he is entitled for sales tax exemption for the period from 7.10.1996 to 6.10.2001 in a sum of Rs. 5,51,346/-. This claim is based on the exemption certificate granted by the District Industries Centre.

3. The assessing authority, for the assessment year 1997-1998, has completed the assessment by its order dated 12.9.2001 granting the benefit of exemption of a sum of Rs.57,002/-.

4. Petitioner had also applied for exemption of a sum of Rs.4,80,000/-, which according to him represents the investment made in Diesel Generator set and Copra Drier. The claim so made is rejected by the District Committee. Aggrieved by the said order passed by the District Committee, the petitioner had carried the matter before the State Level Committee.

5. The State Level Committee while rejecting the claim made by the petitioner for exemption in a sum of Rs.4,80,000/-, which represents investment made in Diesel Generator set and Copra Drier, has observed that the earlier exemption granted by the District Level Committee is also irregular and illegal.

6. Aggrieved by the orders passed by the State Level Committee, the petitioner has filed W.P.(C) 29429 of 2004.

7. The learned Single Judge has rejected the writ petition. Aggrieved by that order passed, the assessee was before this court in W.A. 1910 of 2007. This court by its order dated 15th November, 2007 has allowed the writ appeal and has remanded the matter to the learned Single Judge for a fresh disposal in accordance with law.

8. During the pendency of these proceedings, the Deputy Commissioner of Commercial Taxes has invoked his powers under Section 35 of Act, 1963 to revise the orders of assessment passed by the assessing authority for the assessment year 1997-1998. The Deputy Commissioner, by his order dated 13.12.2004 has set aside the orders of assessment passed by the assessing authority for the assessment year 1997-1998 and further remanded the matter before the assessing authority for a fresh disposal in accordance with law. Aggrieved by the said oder passed by the revisional authority, the assessee has carried the matter by way of second appeal before the Kerala Sales Tax Appellate Tribunal, Additional Bench, Palakkad in T.A. No.254 of 2005. The Tribunal, by its order dated 10th May, 2007 has rejected the appeal filed by the assessee. That is how the assessee is before us in this Sales Tax Revision Case.

9. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "A. Whether on the facts and in the circumstances of the case, has not the Appellate Tribunal gone wrong in confirming Annexure B provisional order?
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> B. Whether on the facts and in the circumstances of the case, has not the Appellate Tribunal gone wrong in failing to render a finding on the additional grounds D and E raised before it as per Annexure C petition?

C. Whether on the facts and in the circumstances of the case, has not the Appellate Tribunal gone wrong in failing to note that even if exemption is cancelled, such cancellation can have only prospective effect from the date of cancellation?"

10. Sri. Harisankar V. Menon, learned counsel appearing for the assessee would submit that the Tribunal went wrong in confirming the orders passed by the revisional authority. Therefore, he requests us to modify the said order.

11. Sri Muhammed Rafiq, learned counsel appearing for the revenue justifies the impugned order passed by the Tribunal.

12. The Tribunal, while sustaining the order passed by the assessing authority, has taken into consideration the orders passed by the District Industries Centre and also the State Level Committee. The State Level Committee has rejected the claim of the assessee for exemption from payment of sales tax.

13. In fact, at the time of completion of the assessment proceedings, the assessing authority had granted exemption to the petitioner industry in a sum of Rs.57,002/-. This had been done by the assessing authority in view of the orders passed by the District Industries Centre.

14. In view of the orders passed by the State Level Committee in the appeal filed by the petitioner, the Deputy Commissioner of Commercial Taxes has invoked his powers under Section 35 of the Act to revise the orders of assessment passed by the assessing authority for the assessment year 1997-1998 and thereafter has remanded the matter to the assessing authority to re-do the matter in accordance with law keeping in view the orders passed by the District Industries Centre and State Level Committee. Since the petitioner industry is not exempted from payment of tax, the assessing authority is justified in rejecting the claim of the petitioner for grant of

exemption. This has to be done by the revising authority in view of the orders passed by the State Level Committee. This aspect of the matter is taken note of by the Tribunal while rejecting the appeal field by the assessee against the order passed by the Deputy Commissioner in exercise of the powers under Section 35 of Act, 1963. In view of the above, we are of the opinion that the Tribunal has not committed any error while passing the impugned order dated 10.5.2007, and therefore the said order need not be interfered by us. Accordingly, the Revision Case requires to be rejected and it is rejected. However, liberty is reserved to the petitioner to make a proper application, if for any reason he succeeds in the writ petition filed by him before this court.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/DK.